

APPLICATION ACCEPTED: October 18, 2013 DATE OF PUBLIC HEARING: January 8, 2014

TIME: 9:00 a.m.

County of Fairfax, Virginia

January 1, 2014

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2013-MA-087

MASON DISTRICT

APPLICANTS/OWNERS:

Carl Ey

Jennifer Kraly Ey

LOCATION:

4700 Brookside Drive, Alexandria, 22312

SUBDIVISION:

Pinecrest

TAX MAP:

72-1 ((6)) 41 & 41V9

LOT SIZE:

2.08 acres

ZONING:

R-1

ZONING ORDINANCE PROVISION:

8-914

SPECIAL PERMIT PROPOSAL:

To permit reduction to minimum yard requirements

based on error in building location to permit

accessory structure to remain 11.4 ft. from side lot

line.

A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

O:\ehaley\(1-8-14) SP 2013-MA-087 Ey (Error & fence)\Staff Report Ey (error).docx

Erin M. Haley

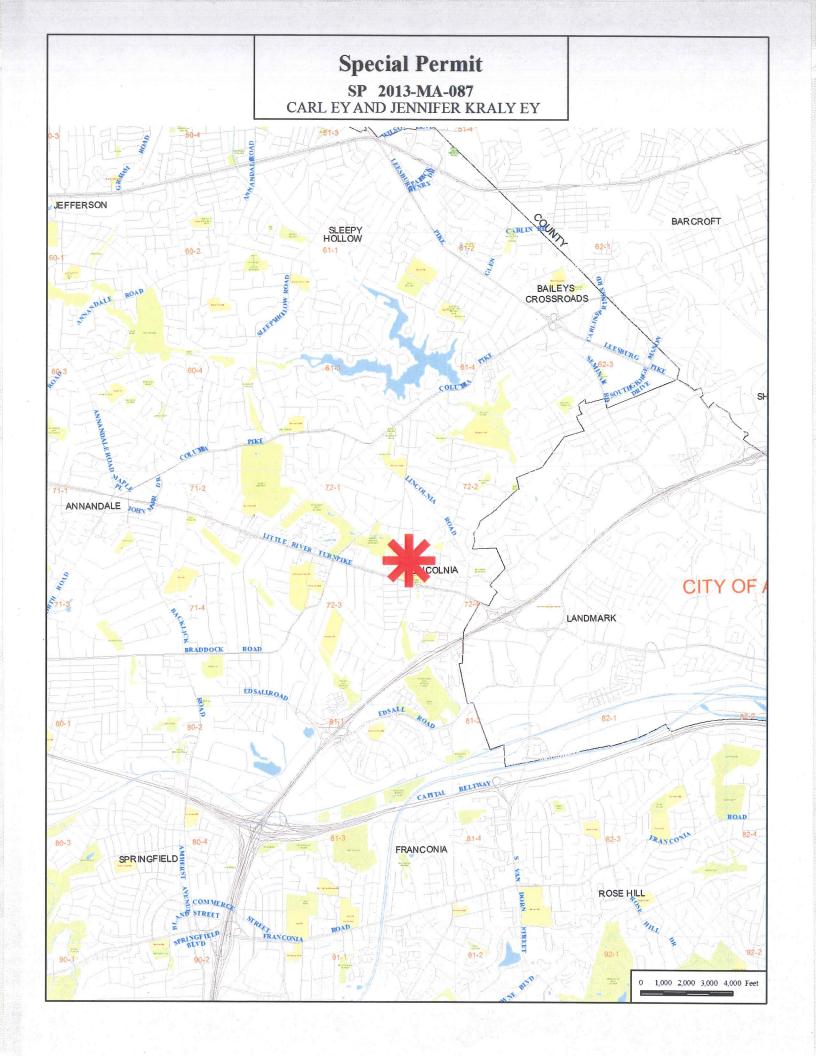
Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703-324-1290 FAX 703-324-3924
www.fairfaxcounty.gov/dpz/

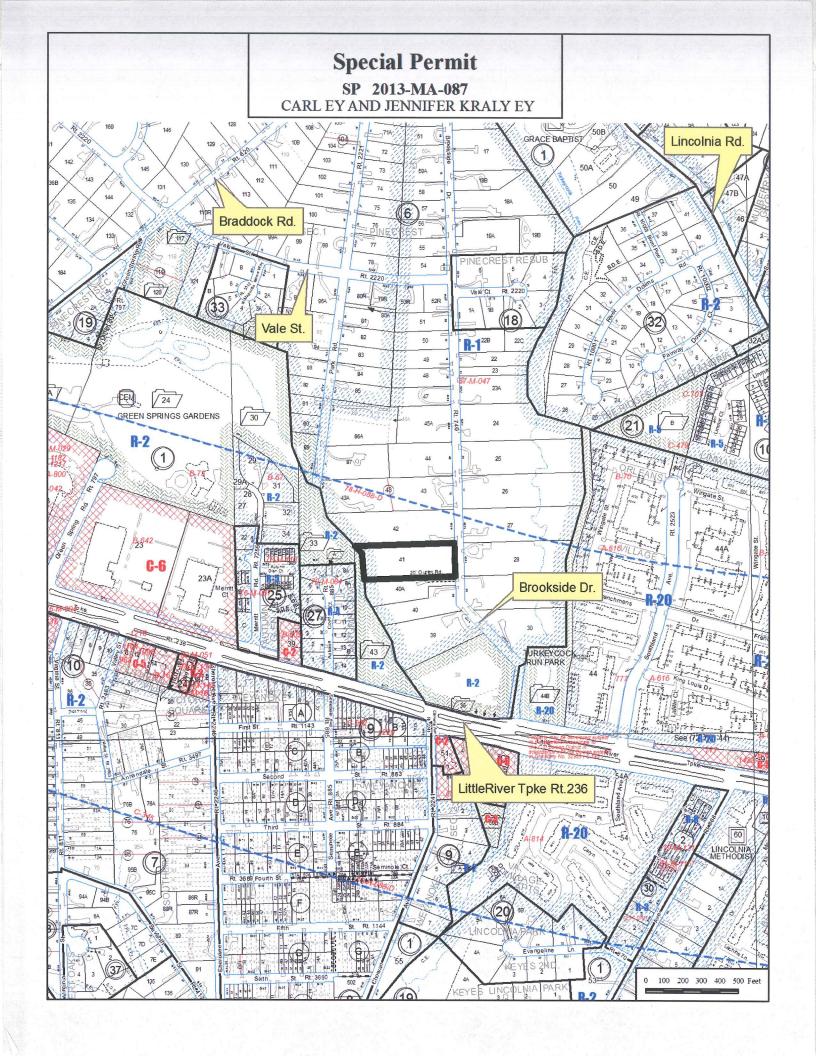


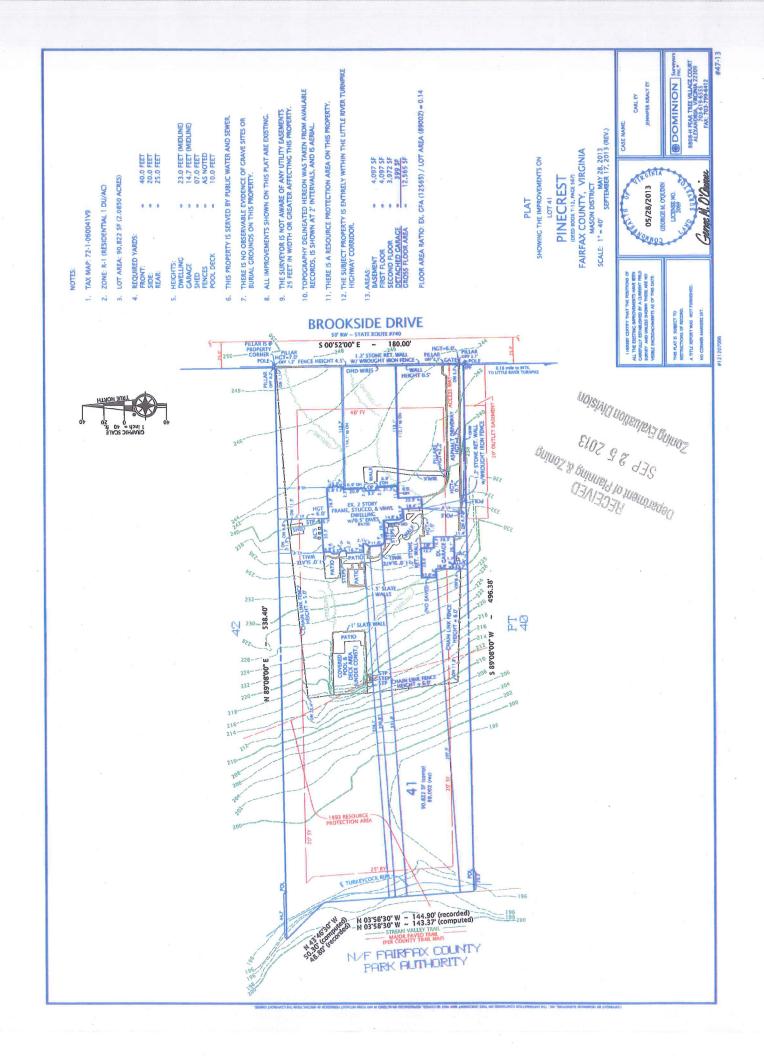
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.



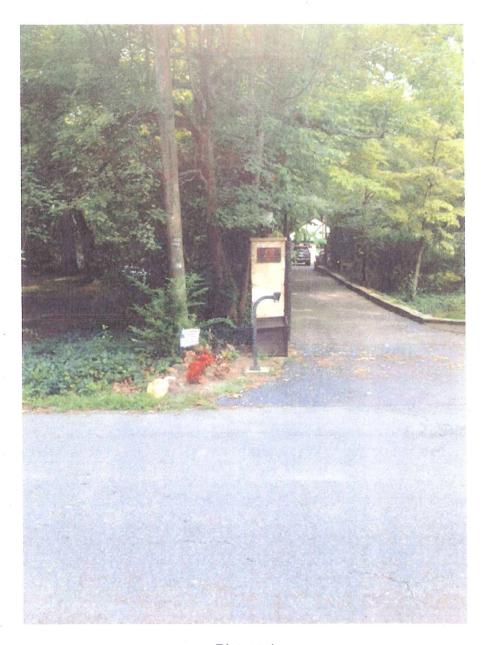
Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).





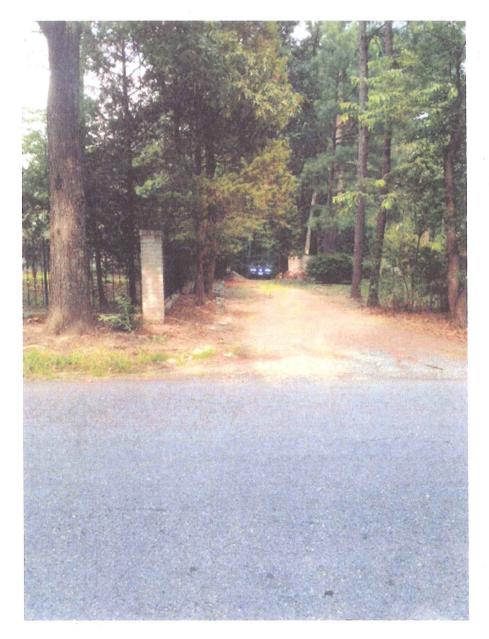


Special Permit Application: 4700 Brookside Drive



Picture 1

View of Subject Property driveway with garage, partial view of adjacent property to the south (left side of photo). Photo taken from Brookside Drive facing west.



Picture 2

View of neighboring property across Brookside Drive. Photo taken facing east from Brookside Drive.



Picture 3

View of front yard and fence.
Photo taken facing east.



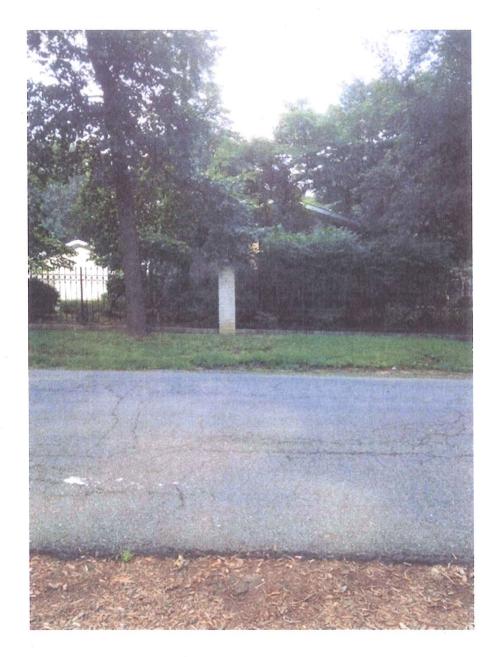
Picture 4

View of front yard and fence.
Photo taken facing northeast.



Picture 5

View of Subject Property with garage to the left. Photo taken facing west from Brookside Drive.



Picture 6

View of neighboring property across Brookside Drive. Photo taken facing east from Brookside Drive.



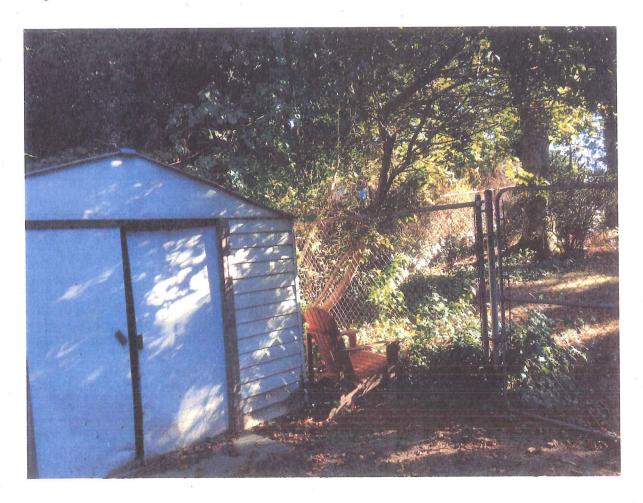
Picture 7

View of Subject Property northern boundary and partial view of adjacent property to the north (right side of photo). Photo taken from Brookside Drive facing west.



Picture 8

View of side yard.
Photo taken from side of home facing north.

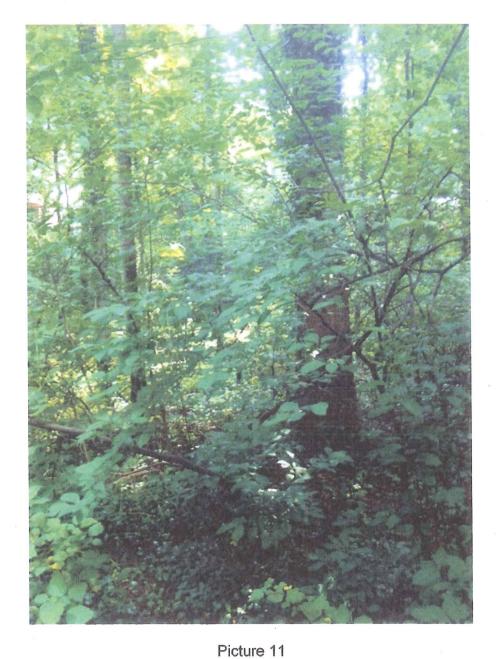


Picture 9

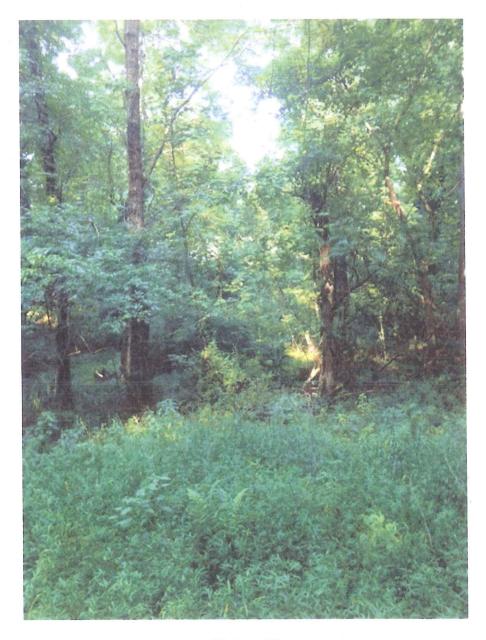
View of accessory structure (shed). Photo taken from side of home facing north.



Picture 10
View of rear yard.



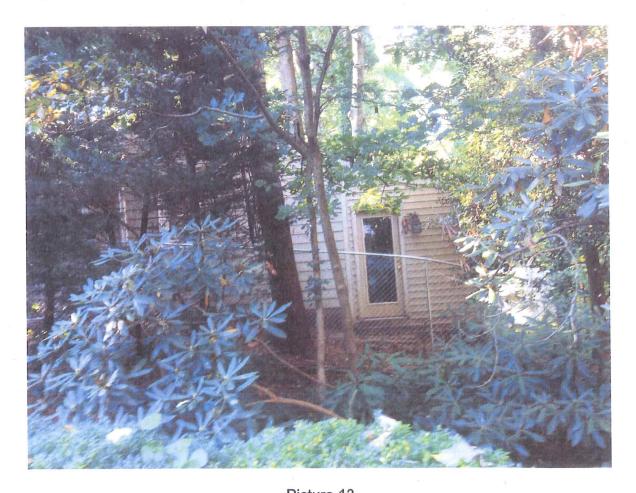
View of Subject Property from the southwest corner.
Photo taken facing east.



Picture 12

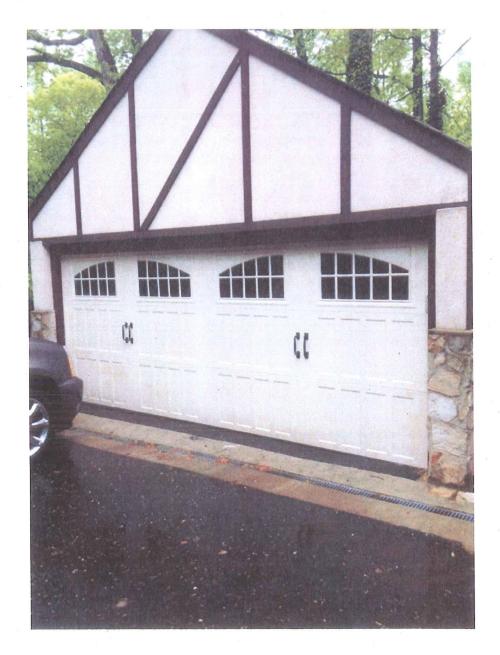
View of Subject Property from western boundary.

Photo taken facing east.



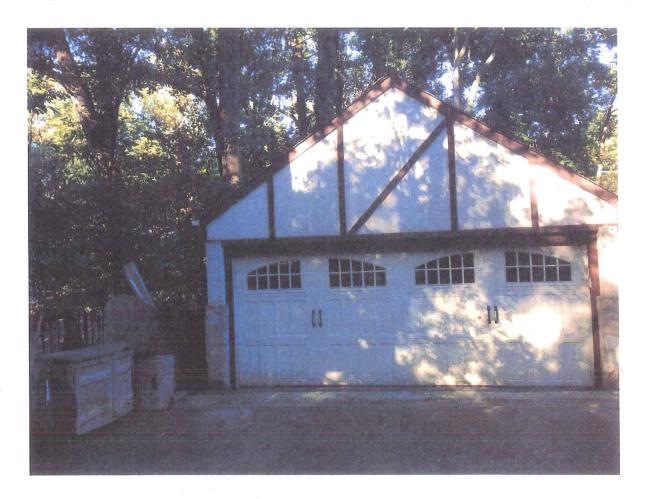
Picture 13

Front view of detached garage.
Photo taken facing south.



Picture 14

Front view of detached garage.
Photo taken facing southwest.



Picture 15

Front view of detached garage. Photo taken facing west.



Picture 16

View of side yard. Photo taken facing south.

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DESCRIPTION OF THE APPLICATION

The applicant is requesting approval of a special permit for a reduction to minimum yard requirements based on an error in building location to permit an accessory structure (detached garage) to remain 11.4 feet from the southern side lot line. The detached garage is 14.7 feet in height and 399 square feet in size. The R-1 zone requires a side yard setback of 20 feet. Therefore, a reduction of 8.6 feet, or 43 percent, is requested.

The original application included a special permit request for a fence greater than 4.0 feet in height to remain in the front yard. However, upon review by staff it was determined that since the lot is greater than two acres in size, the Zoning Ordinance permits a fence up to 7.0 feet in height to be located in any yard.

A copy of the special permit plat depicting the structures on site, titled "Plat Showing the Improvements on Lot 41, Pinecrest" prepared by Dominion Surveyors, Inc., dated May 28, 2013, as revised through September 17, 2013, is included at the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

The 2.08 acre lot is developed with a two-story frame, stucco, and vinyl single family detached dwelling. The dwelling was originally constructed in 1930 but has an effective year built date of 1990. Additions were added in 1994, 1998, and 2000. The detached garage was constructed in 2007. The applicants purchased the property in 2011.

An accessory storage structure 7.0 feet in height and approximately 120 square feet in size is located north of the dwelling within the side yard. A covered pool and patio area, a portion of which is currently under construction, is located in the rear yard. A portion of the rear yard containing the pool is enclosed by a chain link fence 6.0 feet in height. A chain link fence 5.0 feet in height extends down the northern side yard to the front yard lot line. A wrought iron fence 4.5 feet in height extends across the front yard lot line. A gate extends across the asphalt driveway with a pillar 6.0 in height located on each side. A pillar 7.0 feet in height is located on the northeastern corner of the lot in the front yard. A retaining wall 1.2 feet in height runs along the southern side of the asphalt driveway with a wrought iron fence 4.5 feet in height located on top of the wall.

An asphalt driveway provides access to the lot from Brookside Drive up to the detached garage. A concrete walkway extends from the front of the house to the driveway. A concrete walkway also extends around the rear of the house to a series of patios. The property has a manicured lawn with mature trees and vegetation. The topography slopes generally downward from the rear yard to the front yard. A Resource Protection Area covers a portion of the rear yard and the Turkeycock Run Stream flows through the rear yard parallel to the rear lot line.

In April, 2013, the applicants hired a contractor to construct a new deck for the existing

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pool. Upon the contractor's request for a vested rights determination of the subject property, the Zoning Administrator determined that no building permit had been obtained for the detached garage and it did not meet the requirements for vested rights.

The image on the following page illustrates the general character of the surrounding area, which is developed with the Pinecrest Subdivision, zoned R-1. The surrounding lots to the north, south, and east contain single family detached dwellings. The property to the west is the Green Spring Gardens Park.



A copy of information outlining similar special permit requests in the area is attached in Appendix 4.

ZONING ORDINANCE REQUIREMENTS

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)

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This special permit is subject to sections of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 5. Subject to development conditions, the special permit must meet these standards.

CONCLUSION

If it is the intent of the BZA to approve this application, the BZA should condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

APPENDICES

- 1. Proposed Development Conditions
- 2. Applicant's Affidavit
- 3. Applicant's Statement of Justification
- 4. Similar Case History
- 5. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2013-MA-087

January 1, 2014

- 1. This special permit is approved for the location of the detached garage as shown on the plat prepared by Dominion Surveyors, Inc., dated May 28, 2013, as revised through September 17, 2013, as submitted with this application and is not transferable to other land.
- 2. A building permit and final inspections for the accessory structure shall be diligently pursued and obtained within 180 days of final approval of this application or this special permit shall be null & void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Application No.(s):

SP 2013-MA-087

(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

	DAT	E: December 16, 2013 (enter date affidavit is notarized)	_ 121884a
I, <u>Jona</u>	than D. Puvak, attorney/age (enter name of applicant or		nereby state that I am an
(check	one) [] appl	icant icant's authorized agent listed in Par. 1(a)	below
and tha	at, to the best of my knowle	dge and belief, the following is true:	
l(a).	OWNERS, CONTRACT application,* and, if any or and all ATTORNEYS and behalf of any of the forego (NOTE: All relationships Multiple relationships may Applicant/Title Owner, etc.)	a listing of the names and addresses of all PURCHASERS, and LESSEES of the lift the foregoing is a TRUSTEE,** each Bid REAL ESTATE BROKERS, and all A bing with respect to the application: to the application listed above in BOLD to be listed together, e.g., Attorney/Agent, etc. For a multiparcel application, list the first in the Relationship column.)	and described in the ENEFICIARY of such trust, GENTS who have acted on print must be disclosed. Contract Purchaser/Lessee,
NAME (enter first name, middle initial, and last name) Carl Ey Jennifer Kraly Ey		ADDRESS (enter number, street, city, state, and zip cod	e) RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
		4700 Brookside Drive Alexandria, Virginia 22312	Applicants/Title Owners of Tax Map 72-1 ((6)) 41V9, 41
Dominion Surveyors, Inc.		8808-H Pear Tree Village Alexandria, Virginia 22309	Surveyor/Agent

(check if applicable)

Agent:

George M. O'Quinn

[There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

- In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.
- ** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

AP	PF	ND	IX	2
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			APPENDIX 2
Application No.(s):	2013	- MA-087	
	(county-as	ssigned application number(s), to be entered by Cour	nty Staff) Page 1 of 1
	Special	Permit/Variance Attachment to Par. 1(a)	Page <u>1</u> of <u>1</u>)
	DATE	2: December 16, 2013 (enter date affidavit is notarized)	(218049
e.g., Attorney/A	gent, Con	lication are to be disclosed. Multiple relation at a contract Purchaser/Lessee, Applicant/Title Or ap Number(s) of the parcel (s) for each owner	wner, etc. For a multiparcel
NAME (enter first name, middle in last name)	itial, and	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationship listed in BOLD above)
Walsh, Colucci, Lubeley, Emric Walsh, P.C. (effective 1/1/14 - Colucci, Lubeley & Walsh, P.C. Agents: Martin D. Walsh Lynne J. Strobel Timothy S. Sampson M. Catharine Puskar Sara V. Mariska G. Evan Pritchard Jonathan D. Puvak Elizabeth D. Baker Inda E. Stagg Elizabeth A. Nicholson	Walsh,	2200 Clarendon Boulevard, Suite 1300 Arlington, Virginia 22201	Attorneys/Planners/Agent Attorney/Agent Attorney/Agent Attorney/Agent Attorney/Agent Attorney/Agent Attorney/Agent Planner/Agent Planner/Agent Planner/Agent Planner/Agent
			d Dan 1(a) is continued further
(check if applicable)	[]	There are more relationships to be listed and on a "Special Permit/Variance Attachme	ent to Par. 1(a)" form.

Application No.(s): $\frac{\int P \quad 20/3 - MA - 087}{\text{(county-assigned application number(s), to be entered by County Staff)}}$

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: December 16, 2013 (enter date affidavit is notarized) 171884a

The following constitutes a listing*** of the SHAREHOLDERS of all corporations disclosed in this 1(b). affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE **INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code) Dominion Surveyors, Inc. 8808-H Pear Tree Village Alexandria, Virginia 22309

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

George M. O'Quinn Michael A. Clark

There is more corporation information and Par. 1(b) is continued on a "Special (check if applicable) Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed. Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s	SP	2013-	MA-08.	7		
rippineurion react)	(county-assi	gned application nu	mber(s), to be entere	ed by County Staff)	Page 1 of 1
		Special P	ermit/Variance	Attachment to 1	Par. 1(b)	
		DATE:	December 16, 2	.013		1218840
			(enter date af	fidavit is notarize	ed)	
Walsh, Colucci, Lu 2200 Clarendon Bo Arlington, Virginia	abeley, Emrich bulevard, Suite a 22201	& Walsh, P.C. 1300	TION: (enter com (effective 1/1/14 - Wa	alsh, Colucci, Lubeley	er, street, city, state, & Walsh, P.C.)	and zip code)
[]	There are 10	or less_shar	eholders, and all o	f the shareholders a	re listed below.	0
[J]			hareholders, and al aid corporation are		rs owning 10% or m	nore of any
[]	There are m	ore than 10 s	hareholders, but no	shareholder owns	10% or more of any	class of
	stock issued	by said corp	oration, and <u>no sha</u>	reholders are listed	below.	
David J. Bomgard: Thomas J. Colucci Peter M. Dolan, Jr Fogarty, John H. F Bryan H. Guidash,	ner, E. Andrew , Michael J. Co ., Jay du Von, V oote, H. Mark	Burcher, Joughlin, J William A. I Goetzman,	f. Randall Minchew, Mohn E. Rinaldi, Kathle Lynne J. Strobel, Gartl Nan E. Walsh, Martin	een H. Smith, n M. Wainman,	(effective 1/1/14: G. Evan Pritchard, M	1ichael J. Kalish)
NAME & ADD	RESS OF C	ORPORAT	ION: (enter comp	lete name, number,	street, city, state, an	nd zip code)
DESCRIPTION	N OF CORP	ORATION:	(check one staten	nent)		
[]	There are m	ore than 10 s	eholders, and all of shareholders, and a said corporation are	f the shareholders a ll of the shareholde e listed below.	re listed below. rs owning 10% or n	nore of any
[]	There are m	ore than 10 s	shareholders, but n		10% or more of an sted below.	y class
NAMES OF T	HE SHAREI	HOLDERS:	(enter first name,	middle initial, and	last name)	
(check if applic	able) []			information and Par.	ar. 1(b) is continued	I further on a

Application No.(s): SP 2013 - MA-0F7
(county-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: December 16, 2013 (enter date affidavit is notarized) 121884a

The following constitutes a listing*** of all of the PARTNERS, both GENERAL and LIMITED, in 1(c). any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code) None
(check if applicable) [] The above-listed partnership has no limited partners
NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. General Partner, Limited Partner, or General and Limited Partner)

[] There is more partnership information and Par. 1(c) is continued on a "Special (check if applicable) Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed. Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s):

| County-assigned application number(s), to be entered by County Staff) Page Four SPECIAL PERMIT/VARIANCE AFFIDAVIT 121884a DATE: December 16, 2013 (enter date affidavit is notarized) 1(d). One of the following boxes **must** be checked: In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land: Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the 1 aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any 2. member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land. EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.) None

There are more interests to be listed and Par. 2 is continued on a

"Special Permit/Variance Attachment to Par. 2" form.

(check if applicable) []

Application No.(s):

| SP | 2013 - MA - 0 87 | (county-assigned application number(s), to be entered by County Staff)

Page Five

1218849

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: December 16, 2013 (enter date affidavit is notarized) That within the twelve-month period prior to the public hearing of this application, no member of the 3. Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above. EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.) None (NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.) There are more disclosures to be listed and Par. 3 is continued on a (check if applicable) "Special Permit/Variance Attachment to Par. 3" form. That the information contained in this affidavit is complete, that all partnerships, corporations, 4. and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application. WITNESS the following signature: [/] Applicant's Authorized Agent (check one) Jonathan D. Puvak, attorney/agent (type or print first name, middle initial, last name, and title of signee) day of December 2013 , in the State/Comm. Subscribed and sworn to before me this 16 of Virginia , County/City of Arlington

My commission expires: $\frac{11}{30}/2015$

KIMBERLY K. FOLLIN Registration # 283945 Notary Public COMMONWEALTH OF VIRGINIA



Jonathan D. Puvak (703) 528-4700 Ext. 5455 jpuvak@arl.thelandlawyers.com Fax: (703) 528-6050

WALSH COLUCCI LUBELEY EMRICH & WALSH PC

REVISED September 25, 2013

Via Hand Delivery

Barbara C. Berlin, Director Fairfax County Department of Planning & Zoning Zoning Evaluation Division 12055 Government Center Parkway, Suite 801 Fairfax, Virginia 22035

Re: Proposed Special Permit Application

Fairfax County Tax Map Reference: 72-1 ((6)) 0041 and 72-1 ((6)) 0041V9 (the

"Subject Property")

Applicants: Carl Ey and Jennifer Kraly Ey

Dear Ms. Berlin:

Please accept this letter as a statement of justification for a special permit on the Subject Property.

The Subject Property contains approximately 2.08 acres and is located at 4700 Brookside Drive, Alexandria, Virginia 22312, in the Pinecrest subdivision of the Mason Magisterial District. Zoned to the R-1 District, the Subject Property is not subject to any proffers or development conditions and is currently improved with a single-family detached dwelling and a detached garage. The Subject Property is located in the Lincolnia Planning District in the Pinecrest Community Planning Sector (L1) of the Area I Fairfax County Comprehensive Plan (the "Plan"). The Subject Property is planned for low density single-family residential neighborhoods at a density of 1-2 dwelling units per acre.

In the way of background, the Applicants purchased the Subject Property in 2011 in good faith. According to the Real Estate Assessment Records, the detached garage was constructed in approximately 2007. Given that the original dwelling was constructed in 1930, the Applicants reasonably believed that all existing structures conformed to all relevant Fairfax County ordinances and all necessary approvals and permits had been previously obtained. In April 2013, the Applicants hired a contractor to construct a new deck for an existing pool. The Applicants' contractor submitted a survey which depicted the location of the detached garage and requested a determination as to the vested rights of the Subject Property. In response, Matthew Mertz, Assistant to the Zoning Administrator, issued a letter dated May 10, 2013, which indicated that the detached garage did not meet the requirements for vesting and that no building permit has been obtained for the garage (the "Vested Rights Determination"). The Vested Rights

Determination stated that the Applicants could pursue a special permit application in order to allow the garage to remain in its current location.

The purpose of the application is to correct an error in building location and permit a detached garage over eight and one-half (8 ½) feet to remain 11.4 feet from the side lot line, in lieu of the required 20 feet. The Applicants propose a reduction of the minimum side yard requirement by 8.6 feet. In accordance with the requirements of Section 8-914 of the Zoning Ordinance, please accept the following information regarding the error in building location and the Applicants' proposed use of the Subject Property:

- The detached garage extends into the required twenty (20) feet side yard by 8.6 feet, which amounts to an error of approximately forty-three percent (43%). Thus, the error exceeds ten (10) percent of the measurement involved.
- As noted above, the noncompliance was done in good faith and through no fault of the Applicants. The error occurred prior to the Applicants' purchase of the Subject Property.
- The detached garage is in keeping with the character of the existing dwelling and surrounding residential development and in terms of bulk, scale and surrounding structures and will not impair the purpose and intent of this Zoning Ordinance.
- The detached garage is not detrimental to the use and enjoyment to adjacent properties and is harmonious with the surrounding residential neighborhood in the context of the location, height, bulk and scale of surrounding houses, topography, existing vegetation, the preservation of significant trees. Given the size of the Subject Property, a reduction in the minimum side yard requirement by 8.6 feet will not change the relationship of the home to the neighborhood.
- The detached garage and reduction in the side yard requirement will not create an unsafe condition to other property. The garage structure was constructed approximately six (6) years ago and to the best of the Applicants' knowledge has not created any issues with respect to other property.
- As the detached garage was constructed by a prior owner over six (6) years ago, removal of the garage and compliance with the minimum yard requirements would cause unreasonable hardship upon the Applicants and require substantial alterations or relocation of the structure and surrounding landscape and hardscape.
- The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations. No new construction is proposed with this application and no additional structures will be constructed in the minimum side yard.

Further, the Applicants requests an increase in fence height in the front yard to permit an existing fence of four and one-half (4 ½) feet to remain. In accordance with the requirements of

Section 8-923 of the Zoning Ordinance, please accept the following information regarding the increase in fence height:

- The existing fence is four and one-half (4 ½) feet and does not exceed six (6) feet. The fence is not eligible for administrative approval of an increase in fence height because the additional height exceeds five (5) percent.
- The Subject Property is not a corner lot and therefore the provisions of Section 2-505 are not applicable.
- As noted above, the Applicants acquired the Subject Property in 2011. Acting in good faith, the Applicants reasonably assumed that the fence had been constructed in accordance with the requirements of the Zoning Ordinance. The increase in fence height is warranted due to the location of the principal structure on the lot. Further, the fence provides additional security for the Subject Property.
- The style and design of the fence are consistent with the principal structure. The increase in height is in keeping with the character of the Subject Property and compatible with the adjacent residential uses. Many of the Applicants' neighbors on Brookside Drive have constructed fences of similar style in their front yards.
- The fence has been existing for several years and to the best of the Applicants' knowledge has not caused any adverse impact to other properties in the vicinity.

Except as otherwise noted in terms of location and height of the garage and the fence in the front yard, the Subject Property conforms to the provisions of all applicable ordinances, regulations and adopted standards. To the best of the Applicants' knowledge the Subject Property contains no hazardous or toxic substances as set forth in the applicable regulations.

The Applicants propose this application to reduce the side yard requirements and permit a moderate increase in fence height to bring the Subject Property into compliance with the Zoning Ordinance. The proposed reduction will allow the continued use of the garage, constructed over six (6) years ago and prior to the Applicants' purchase of the Subject Property. Both the garage and the fence are in keeping with the neighborhood and will not adversely impact adjoining property owners.

Should you have any questions, or require additional information, please do not hesitate to give me a call. I would appreciate the acceptance of this application and the scheduling of a public hearing before the Board of Zoning Appeals at your earliest convenience. As always, I appreciate your cooperation and assistance.

Page 4 of 4

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

Jonathan D. Puvak

cc: Carl Ey

John Rinaldi

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Jonathan D. Puvak (703) 528-4700 Ext. 5455 jpuvak@arl.thelandlawyers.com Fax: (703) 528-6050 WALSH COLUCCI LUBELEY EMRICH & WALSH PC RECEIVED
Department of Planning & Zoning
JUL 2 3 2013
Zoning Evaluation Division

July 23, 2013

Via Hand Delivery

Barbara C. Berlin, Director Fairfax County Department of Planning & Zoning Zoning Evaluation Division 12055 Government Center Parkway, Suite 801 Fairfax, Virginia 22035

Re: Proposed Special Permit Application

Fairfax County Tax Map Reference: 72-1 ((6)) 0041 and 72-1 ((6)) 0041V9 (the

"Subject Property")

Applicants: Carl Ey and Jennifer Kraly Ey

Dear Ms. Berlin:

Please accept this letter as a statement of justification for a special permit on the above-referenced property.

The Subject Property contains approximately 2.08 acres and is located at 4700 Brookside Drive, Alexandria, Virginia 22312, in the Pinecrest subdivision of the Mason Magisterial District. Zoned to the R-1 District, the Subject Property is not subject to any proffers or development conditions and is currently improved with a single-family detached dwelling and a detached garage. The Subject Property is located in the Lincolnia Planning District in the Pinecrest Community Planning Sector (L1) of the Area I Fairfax County Comprehensive Plan (the "Plan"). The Subject Property is planned for low density single-family residential neighborhoods at a density of 1-2 dwelling units per acre.

In the way of background, the Applicants purchased the Subject Property in 2011 in good faith. According to the Real Estate Assessment Records, the detached garage was constructed in approximately 2007. Given that the original dwelling was constructed in 1930, the Applicants reasonably believed that all existing structures conformed to all relevant Fairfax County ordinances and all necessary approvals and permits had been previously obtained. In April 2013, the Applicants hired a contractor to construct a new deck for an existing pool. The Applicants' contractor submitted a survey which depicted the location of the detached garage and requested a determination as to the vested rights of the Subject Property. In response, Matthew Mertz, Assistant to the Zoning Administrator, issued a letter dated May 10, 2013, which indicated that the detached garage did not meet the requirements for vesting and that no building permit has been obtained for the garage (the "Vested Rights Determination"). The Vested Rights Determination stated that the Applicants could pursue a special permit application in order to allow the garage to remain in its current location.

PHONE 703 528 4700 FAX 703 525 3197 WWW.THELANDLAWYERS.COM
COURTHOUSE PLAZA 2200 CLARENDON BLVD., THIRTEENTH FLOOR ARLINGTON, VA 22201-3359

The purpose of the application is to correct an error in building location and permit a detached garage over eight and one-half (8 ½) feet to remain 11.4 feet from the side lot line, in lieu of the required 20 feet. The Applicants propose a reduction of the minimum side yard requirement by 8.6 feet. In accordance with the requirements of Section 8-914 of the Zoning Ordinance, please accept the following information regarding the error in building location and the Applicants' proposed use of the Subject Property:

- The detached garage extends into the required twenty (20) feet side yard by 8.6 feet, which amounts to an error of approximately forty-three percent (43%). Thus, the error exceeds ten (10) percent of the measurement involved.
- As noted above, the noncompliance was done in good faith and through no fault of the Applicants. The error occurred prior to the Applicants' purchase of the Subject Property.
- The detached garage is in keeping with the character of the existing dwelling and surrounding residential development and in terms of bulk, scale and surrounding structures and will not impair the purpose and intent of this Zoning Ordinance.
- The detached garage is not detrimental to the use and enjoyment to adjacent properties and is harmonious with the surrounding residential neighborhood in the context of the location, height, bulk and scale of surrounding houses, topography, existing vegetation, the preservation of significant trees. Given the size of the Subject Property, a reduction in the minimum side yard requirement by 8.6 feet will not change the relationship of the home to the neighborhood.
- The detached garage and reduction in the side yard requirement will not create an unsafe condition to other property. The garage structure was constructed approximately six (6) years ago and to the best of the Applicants' knowledge has not created any issues with respect to other property.
- As the detached garage was constructed by a prior owner over six (6) years ago, removal of the garage and compliance with the minimum yard requirements would cause unreasonable hardship upon the Applicants and require substantial alterations or relocation of the structure and surrounding landscape and hardscape.
- The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations. No new construction is proposed with this application and no additional structures will be constructed in the minimum side yard.

Except as otherwise noted in terms of location and height, the garage conforms to the provisions of all applicable ordinances, regulations and adopted standards. To the best of the Applicants' knowledge the Subject Property contains no hazardous or toxic substances.

The Applicants simply propose this application to reduce the side yard requirements to bring the Subject Property into compliance with the Zoning Ordinance. The proposed reduction will allow the continued use of the garage, constructed over six (6) years ago and prior to the Applicants' purchase of the Subject Property. The garage is in keeping with the neighborhood and will not adversely impact adjoining property owners.

Should you have any questions, or require additional information, please do not hesitate to give me a call. I would appreciate the acceptance of this application and the scheduling of a public hearing before the Board of Zoning Appeals at your earliest convenience. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

Jonathan D. Puvak

ce: Carl Ey
John Rinaldi

{A0568412.DOCX / 1 Special Permit Statement of Justification 000267 000304}

Similar Case History

Group: 2011-MA-093

SP 2011-MA-093

STAFF REPORT

LOCATOR MAP

APPLICANT:

ABDERRAHMAN RHANIME

STATUS:

APPLICATION APPROVED

STATUS/DECISION

02/15/2012

DTE: ZONING DISTRICT:

DESCRIPTION:

REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STRUCTURE TO REMAIN 4.8 FEET FROM SIDE LOT LINE AND ACCESSORY STORAGESTRUCTURE TO REMAIN 2.0 FROM SIDE LOT LINE

LOCATION:

4508 BROOKSIDE DRIVE

TAX MAP #5: 0721 06 0051

8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

- 1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
- 2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
- 3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
- 4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
- 5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
- 6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
- 7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
- 8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards for All Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

- 1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
- 2. All uses shall comply with the performance standards specified for the zoning district in which located.
- 3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

- 1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
 - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of well and/or septic field.
 - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. Seal and signature of professional person certifying the plat.

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:

- A. The error exceeds ten (10) percent of the measurement involved, and
- B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
- C. Such reduction will not impair the purpose and intent of this Ordinance, and
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- E. It will not create an unsafe condition with respect to both other property and public streets, and
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- 3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
- Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
- 5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.